



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Federal Contracting Corporation

File: B-240947.2

Date: January 3, 1991

Earl H. Dearborn for the protester.
Paul M. Fisher, Esq., Department of the Navy, for the agency.
Richard P. Burkard, Esq., and Andrew T. Pogany, Esq., Office
of the General Counsel, GAO, participated in the preparation
of the decision.

DIGEST

Protest allegation that solicitation, as amended, failed to include list of all questions submitted by protester and agency responses to those questions concerns an alleged solicitation defect and is untimely where protest is filed after bid opening.

DECISION

Federal Contracting Corporation protests the award of a contract to D&D Management Services, Inc. under invitation for bids (IFB) No. N62467-90-B-8566, issued by the Department of the Navy for management, operation, and repair of transportation equipment. The protester alleges that the agency failed to disseminate information to all potential bidders that was necessary to ensure that bidders would compete on an equal basis.

We dismiss the protest.

The IFB was issued April 27, 1990, and bid opening was scheduled for June 7. By letter dated June 6, Federal Contracting, the incumbent contractor, submitted a list of 33 questions relating to the IFB specifications. In response, the Navy initially issued amendment No. 4 to the IFB, which extended bid opening to June 28, 1990. On June 14, the agency issued amendment No. 5 to the IFB, which revised several sections of the IFB. Although the amendment did not specifically refer to the questions submitted by the protester in its letter, the revised sections were among those questioned by the protester. Additionally, by letter dated June 14, the agency sent Federal Contracting a letter listing responses to

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all questions submitted by Federal Contracting. The agency did not send this list to any other bidder.

Five bids were received at the June 28 bid opening; D&D submitted the low bid, and the protester submitted the next low bid. Federal Contracting filed an agency-level protest alleging that D&D was not a responsible contractor and that its bid was unreasonably low, indicating a mistake. The agency began procedures to determine whether, in fact, D&D's bid contained a mistake and, if so, whether the mistake could be corrected. The Navy learned that D&D's bid contained a mathematical error and determined that correction of the bid was allowable. Following correction of the bid, the agency awarded the contract to D&D on August 24.

On August 28, Federal Contracting filed its original protest with our Office alleging that D&D should not have been allowed to correct its bid and that D&D was nonresponsible. On September 5, we dismissed the protest stating that the protest letter did not state a valid basis of protest and that our Office generally does not review affirmative determinations of responsibility. While our dismissal notice was being prepared, the protester supplemented its protest by letter dated August 31, alleging that the agency improperly failed to provide all prospective bidders with the questions contained in the protester's June 6 letter and the agency's responses.

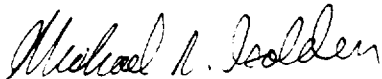
On September 11, the protester requested that we reconsider our prior dismissal. The request did not contain any information showing that our prior dismissal was incorrect; rather, it asked that we reconsider based on the new information contained in the August 31 letter. On September 24, our Office advised the parties that we would consider the new allegation as a new protest.

In its August 31 supplement to its protest, Federal Contracting contends that the Navy violated Federal Acquisition Regulation (FAR) § 52.214-6, which requires that any information given to a prospective bidder concerning a solicitation be furnished promptly to all other prospective bidders as an amendment to the solicitation, if that information is necessary in submitting bids or if the lack of it would be prejudicial to other prospective bidders. Federal Contracting argues that, as the incumbent, it thought that the IFB did not adequately describe the work to be performed and the conditions to be encountered. The protester states that it first learned that the list of questions and the agency responses were not provided to all prospective bidders on August 30.

We find that the protester's allegation that the agency failed to distribute copies of the protester's June 6 questions and

the agency responses, raised for the first time in the August 31 letter, is untimely. Amendment No. 5 to the IFB provided notice to Federal Contracting that the agency had reviewed the protester's list of questions and determined that some of the questions warranted clarifying the IFB by amendment, while other questions did not. The amendment to the IFB was obviously the means chosen by the agency to respond to the protester's concerns listed in its June 6 letter. In this regard, as the protester is aware, the FAR requires that additional information which is disseminated before submission of bids be provided to prospective bidders as an amendment to the IFB. See id. Here, the amendment made no reference to the protester's list of questions or the Navy's responses. Consequently, the protester knew, or should have known, from the terms of amendment No. 5, that the IFB or its amendments failed to include all the protester's questions or agency responses. Therefore, in order to have timely objected to the failure to include these documents in the amendment, Federal Contracting would had to have filed its protest, concerning this alleged impropriety in the IFB, by the amended bid opening date, June 28. See 4 C.F.R. § 21.2(a)(1) (1990). Its August 31 letter raising this protest ground is clearly untimely.

The protest is dismissed.



Michael R. Golden
Assistant General Counsel